

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS & ST. JOHN

HOLLAND CONSTRUCTION, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 2007-127
	)	
FREDERICK KOPKO, JR., and	)	
MARY ELIZABETH KOPKO,	)	
	)	
Defendants.	)	
_____	)	

ATTORNEYS:

James M. Derr, Esq.  
St. Thomas, U.S.V.I.  
*For the plaintiff.*

Frederick Kopko, Jr.  
*Pro se defendant.*

Mary Elizabeth Kopko  
*Pro se defendant.*

ORDER

GÓMEZ, C.J.

Before the Court is the motion of *pro se* defendants Frederick Kopko, Jr. and Mary Elizabeth Kopko (the "Kopkos") to dismiss this matter for lack of jurisdiction.

I. FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff in this matter, Holland Construction, Inc. ("Holland"), is a corporation organized under the laws of the U.S. Virgin Islands and with its principal place of business on St. Thomas, U.S. Virgin Islands. According to the Complaint, the

Kopkos are citizens of the State of Illinois. Holland alleges that it contracted with the Kopkos to complete a partially-constructed house on certain real property the Kopkos own on St. Thomas. Holland further alleges that it substantially completed the house, and that the Kopkos thereafter unilaterally terminated the contract. Consequently, Holland initiated this two-count action for (1) amounts due under the contract and (2) foreclosure of a construction lien. Holland alleges that this Court has jurisdiction pursuant to 28 U.S.C. § 1332.<sup>1</sup>

The Kopkos now move to dismiss this action pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

## **II. ANALYSIS**

Where a motion to dismiss is based on Federal Rule of Civil Procedure 12(b)(1), and the motion challenges the district court's jurisdiction, the court is not confined to the allegations in the complaint, but can consider other evidence, such as affidavits, depositions, and testimony, to resolve factual issues related to jurisdiction. *See Mortensen v. First Federal Sav. and Loan Ass'n.*, 549 F.2d 884, 891 (3d Cir. 1977)

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<sup>1</sup> 28 U.S.C. § 1332 provides, in pertinent part:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$ 75,000, exclusive of interest and costs, and is between--  
(1) Citizens of different States.

(stating that because at issue is the very power of the trial court to hear the case, a court is free to weigh evidence beyond the allegations in the complaint). Furthermore, "no presumptive truthfulness attaches to plaintiffs allegations" and "the plaintiff will have the burden of proof that jurisdiction does in fact exist." *Id.* If it appears from the pleadings or other evidence to a "legal certainty that the claim is really for less" than that required for diversity jurisdiction, and the plaintiff cannot refute the evidence, the federal suit should be dismissed.<sup>2</sup> *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938); *Nelson v. Keefer*, 451 F.2d 289 (3d Cir. 1971). The jurisdictional amount in controversy can be satisfied if the amount of damages exceeds \$75,000. 28 U.S.C. 1332(a); *Williams v. Tutu Park Ltd.*, Civ. No. 1999-138, 2005 U.S. Dist. LEXIS 10591, at \*5 (D.V.I. May 11, 2005).

The Kopkos assert that Holland has failed to satisfy the jurisdictional amount in controversy requirement because the Complaint alleges damages that do not exceed \$75,000. To support that assertion, the Kopkos attach to their motion a complaint that Holland apparently filed in the Superior Court of the Virgin

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<sup>2</sup> The court may consider evidence beyond the pleadings without treating the motion as one for summary judgment because its decision does not operate as a determination on the merits. See *Boyle v. Governor's Veterans Outreach & Assistance Ctr.*, 925 F.2d 71, 74-75 (3d Cir. 1991).

Islands (the "Superior Court").<sup>3</sup> That complaint alleges damages in the amount of \$42,256.28. The Kopkos also attach a letter from Holland's counsel to defendant Frederick Kopko. In that letter, Holland's counsel indicates that "in order to put this matter at rest for both sides, [Holland] is willing to split the difference with you. . . . This would result in a settlement agreement [for] \$38,256.28." (Defs.' Mot. to Dismiss, Exh. C at 2.) The Kopkos appear to suggest that because the amount of the proposed settlement agreement is \$38,256.28, the amount in controversy requirement is not satisfied.

Holland argues that although the complaint filed in the Superior Court alleged damages in the amount of \$42,256.28, "subsequent investigation revealed an additional invoice . . . ." (Pl.'s Opp'n. to Mot. to Dismiss 2.) Attached to Holland's Opposition to Motion to Dismiss are two documents - one is captioned as an invoice, the other a statement (the "Statement") - that Holland asserts are for work performed under its contract with the Kopkos. Holland further asserts that these documents demonstrate that the amount in controversy exceeds the jurisdictional minimum.

The invoice contains a list of construction-related

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<sup>3</sup> In its Opposition to Motion to Dismiss, Holland states that this action was initially commenced in the Superior Court. Nothing in the parties' pleadings indicates the disposition of the action before the Superior Court.

services, the date on which those services were performed, and the amount due for those services. The Statement contains a list of invoices and corresponding amounts due. The Statement further indicates that the total amount due is \$83,075.74. The Statement thus establishes that the amounts due under the contract exceed \$75,000. *See, e.g., Megan v. Goldman*, Civ. No. 98-1825, 1998 U.S. Dist. LEXIS 8798, at \*3-4 (E.D. Pa. June 5, 1998) (finding that "[a]t this stage of the proceedings, it is not clear to a legal certainty that plaintiff's claim is for less than \$75,000" where the plaintiff provided an invoice showing that the defendants owed the plaintiff in excess of \$162,818).

Holland has demonstrated to a legal certainty that the amount in controversy in this matter exceeds the jurisdictional minimum of \$75,000. The Kopkos have provided no competent evidence to the contrary. *Cf. Sunnyrock Bldg. & Design Co. v. Gentile*, 2000 U.S. Dist. LEXIS, at \*4-5 (D.V.I. July 18, 2000) (finding that the plaintiff did not meet the jurisdictional minimum to a legal certainty where an affidavit filed with the Court showed that the plaintiff had improperly billed the defendants, and the plaintiff did not controvert that affidavit with its own evidence). Accordingly, the Kopkos' motion must be denied.

**III. CONCLUSION**

For the reasons stated above, it is hereby

**ORDERED** that the motion to dismiss is **DENIED**.

**Dated: November 20, 2007**

S\\_\_\_\_\_  
**CURTIS V. GÓMEZ**  
**Chief Judge**

copy: Hon. Geoffrey W. Barnard  
James M. Derr, Esq.  
Frederick Kopko, Jr., *pro se*  
Mary Elizabeth Kopko, *pro se*  
Carol C. Jackson  
Lydia Trotman  
Claudette Donovan  
Olga Schneider  
Gregory F. Laufer